

**The Union of Refugee Women and Others and The Director of the Private Security Industry Regulatory Authority and Others**

**Case CCT 39/06**

**Date of Hearing: 29 August 2006**

**Date of Judgment: 12 December 2006**

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**MEDIA SUMMARY**

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*The following explanation is provided to assist the media in reporting this application and is not binding on the constitutional court or any member of the court.*

On Tuesday 29 August, the Constitutional Court heard an application concerning the rights of refugees to work in the private security industry in South Africa. The Private Security Industry Regulation Act 56 of 2001 (the Security Act) requires security service providers to register with the Private Security Industry Regulatory Authority (the Authority). Section 23(1)(a) of the Security Act lists citizenship or permanent residence as a requirement for registration. Despite the provisions of section 23(1)(a), section 23(6) confers upon the Authority the discretion to register any applicant as a security service provider, on good cause shown and on grounds which are not in conflict with the purpose of the Security Act and the objects of the Authority. The applicants challenged section 23(1)(a) on the basis that it constitutes a violation of the right to equality, and discriminates against them on the basis that they are not citizens or permanent residents. Alternatively, they challenged the validity of the decisions of the Authority. All of the respondents opposed the application.

The applicants in this case are the Union of Refugee Women, a voluntary association, and twelve refugees whose registrations as security service providers were withdrawn or whose applications for registration were refused by the Authority. Several of those denied registration appealed unsuccessfully to the Private Security Industry Appeals Committee. The respondents are the authorities responsible for the regulation of the private security industry, as well as the Minister of Safety and Security.

Writing for the majority, Kondile AJ acknowledged that refugees are a vulnerable group in our society and stressed that foreign nationals, including refugees, are not inherently less trustworthy than South Africans, but the reality is that citizens and permanent residents will be more easily able to prove their trustworthiness in terms of the Security Act.

Section 27(f) of the Refugees Act grants refugees the right to seek employment. Section 23(1)(a) of the Security Act limits the refugees' right to choose employment only to the extent that they may not work in the private security industry. It in no way prevents them from seeking employment in other industries. They may also enter this single excluded industry if they successfully invoke the provisions of section 23(6) of the Security Act or if they acquire permanent resident status. Kondile AJ held that while refugees are fully entitled to work in South Africa, section 22 of the Constitution limits the right to choose a vocation to citizens only. The right to equality was held not to be violated by section

23(1)(a). In essence, the regulatory scheme was found to be narrowly tailored to the purpose of screening entrants to the private security industry rather than constituting a blanket ban on the registration of refugees as private security service providers.

Kondile AJ did however express concern at the lack of assistance provided to refugees by the Authority. In particular, he expressed the view that the Authority should, at the very least, provide refugee applicants with information on the possibility of exemption in terms of section 23(6) of the Security Act, as well as on how to apply for it. He concluded that an application for exemption to the Authority is an internal remedy still available to the applicants. It is only fair now that the applicants are aware of what is expected as regards an application for exemption, and the Authority has the guidance of the judgment at its disposal when considering exemption applications, that they be given an opportunity to so apply.

On the issue of costs, Kondile AJ held that the applicants raised important constitutional issues of practical relevance to the functioning of an industry which is becoming increasingly important in South Africa, and had had to resort to constitutional litigation to clarify practical aspects of the operation of the regulatory scheme due to the lack of information and guidance on the part of the respondents. The respondents were thus ordered to bear the costs of the applicants including the costs attendant on the employment of two counsel in both the High Court and this Court. The judgment of Kondile AJ was concurred in by Moseneke DCJ, Madala J, Nkabinde J, Sachs J and Yacoob J.

Sachs J, in a separate concurring judgment, agreed that the matter should be sent back for consideration by the relevant officials on the basis of properly prepared papers and in the light of the principles enunciated by this Court. He highlighted a number of considerations that strongly favour the notion that being an accredited refugee in itself goes a long way to establishing good cause for exemption. Both international law and the Refugees Act provide special status to refugees in South Africa which has to be taken into account when considering exemption. While it may be fair to impose more stringent requirements for high level, security posts, in light of this special status it is not fair to exclude refugees from posts such as car guarding.

Mokgoro J and O'Regan J have written a joint dissenting judgment with which Langa CJ and Van der Westhuizen J concur. They hold that section 23(1)(a) of the Private Security Industry Regulation Act does discriminate unfairly on the basis of refugee status. They are not persuaded that the purpose identified by the Minister – to ensure that security service employees are trustworthy – is really served by the section. In this regard, they note that even if a refugee can establish that he or she has not committed a crime for the previous ten years, section 23(1)(a) still bars the refugee from being registered as a security service provider. They note the vulnerable status of refugees as a group in South Africa and the need to ensure that legislation does not promote xenophobia. They also point to South Africa's international law obligations in terms of the 1951 UN Geneva Convention relating to the status of refugees which requires signatory states to accord recognised refugees the most favourable treatment accorded to foreign nationals in the same circumstances in respect of wage-earning employment. The order they would propose would provide that refugees who can meet the other requirements of the Act should not be barred from registration as security service providers. Those refugees who

cannot meet those requirements should seek to establish that “good cause” exists for them to be registered as contemplated by section 23(6).